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APPENDIX

IN THE

Supreme Court of the United States

October Term, 1968

Number 26

SETH BALLARD, ET AL.,
Appellants,
versus
JOE T. PATTERSON, ET AL.,
Appellees.

CHARLES E. BUNTON, ET AL.,
Appellants,
versus
JOE T. PATTERSON, ET AL.,
Appellees.

VERNON TOM GRIFFIN, ET AL.,
Appellants,
versus
JOE T. PATTERSON, ET AL.,
Appellees.

Lawrence Aschenbrenner
Martha M. Wood
233 North Farish Street
Jackson, Mississippi 39201

Attorneys for Appellants

Civil Docket Entries - No. 1204

8-10-67 COMPLAINT, original and twelve (12) copies filed.

9-8-67 Answer of Defendants John Cade and L. B. Allen, Jr., with Certificate of Service - filed in quadruplicate.

9-8-67 Answer of Defendants Grover Goodwin, Dr. Frank Headley, Robert Templeton and Harold Barland, with Certificate of Service filed in quadruplicate.

9-15-67 Motion for Substitution of Parties and dropping and adding parties and for dismissal of certain claims for relief and for default Judgment, filed.

9-28-67 Order amending the Order heretofore filed and entered in this cause on September 25, 1967, adding Ethan Porter as a defendant, dismissing complaint as to defendant William Smith, adding Orin R. Segrest, Jr., as a party -defendant and dismissing complaint as to defendant Robert Vaughn and dismissing Plaintiffs' second claim for relief without prejudice, filed and entered OB 1967 pages 213 and 214.

10-9-67 Order denying injunction prayed for and dismissing complaint at the cost of Plaintiffs, filed and entered Pages 230 and 231 the cost of Plaintiffs, filed and entered Pages 230 and 231.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

CHARLES E. BUNTON and WILLIAM ROSS,
on behalf of themselves and all
other persons similarly situated,
Plaintiffs,

CIVIL ACTION
NO. 1204

-vs-

-vs-

JOE T. PATTERSON, Attorney General of
the State of Mississippi; GROVER
GOODWIN, DR. FRANK HEADLEY, ROBERT
TEMPLETON, HAROLD BARLAND, as
members of the Board of Education
of Claiborne County; JOHN CADE,
and L. B. ALLEN, JR., as County
Election Commissioners for Claiborne
County,
Defendants.

(Filed Aug. 10, 1967)

COMPLAINT

1. This action arises under the Voting Rights Act of 1965 (Title 42 U.S.C. Section 1973), Fourteenth and Fifteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1971. It seeks a declaratory judgment that Section 6271-08 of the Mississippi Code, as

amended, is violative of said Voting Rights Act, Fourteenth and Fifteenth Amendments and 42 U.S.C.§ 1971, and preliminary and permanent injunctions against the application and enforcement of said Section 6271-08 by the Board of Education of Claiborne County, Mississippi, and against the appointment of the Superintendent of Education for Claiborne County by the Board of Education of Claiborne County pursuant to or in accordance with the provisions of Section 6271-08.

2. Jurisdiction is conferred on this Court by Title 28 U.S.C. §§ 1343(3) and (4), 2201 and 2202, and by Title U.S.C.§§ 1971 (d) and 1973(j)(f). A district court of three judges is required to be convened by Title 28 U.S.C. Section 2281 and Title 43 U.S. C. Section 1973c.

3. Plaintiffs are all adult Negro citizens of Mississippi and of the United States, and are citizens, residents and qualified electors of Claiborne County, Mississippi.

4. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated as qualified electors of Claiborne County and as potential candidates for Superintendent of Education of Claiborne County, pursuant to Rule 23 of the Federal Rules of Civil Procedure. As to the classes: (1) they are so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the classes; (3) the claims of the plaintiffs are typical of the claims of the classes; (4) plaintiffs will fairly and adequately protect the interests of the classes; and (5) defendants have acted and

will act on grounds generally applicable to the classes, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the classes as a whole.

5. Defendant Joe T. Patterson is Attorney General of the State of Mississippi.

6. (a) Defendants Goodwin, Headley, Templeton, Barland are members of the Board of Education of Claiborne County, and as such, have the power under the amended version of Section 6271-08 of the Mississippi Code, to appoint the County Superintendent of Education for Claiborne County, which Superintendent would have the power and the duty to supervise the public schools to comply with the various laws relating thereto, pursuant to Sections 6252-01 *et seq.* of the Mississippi Code.

(b) Defendants Cade, and Allen are the County Election Commissioners for Claiborne County and, as such, supervise and administer all general elections in Claiborne County pursuant to Sections 3204 *et seq.* of the Mississippi Code.

FIRST CLAIM FOR RELIEF

7. Each county in Mississippi, including Claiborne County, has a public school system governed in certain respects by the County Superintendent of Education. Prior to and on November 1, 1964, and up until the date referred to in paragraph 8 hereof, every county in Mississippi except one elected its Superintendent of

Education unless it held a special election pursuant to statute to make such post appointive. (Mississippi Code 6271-08) Claiborne County has always elected its County Superintendent of Education.

8. Effective June 17, 1966, the Legislature of Mississippi with the approval of Governor Paul B. Johnson, amended the aforesaid Section 6271-08 to provide that in certain described counties, the Superintendent of Education must be appointed rather than elected. Specifically, Section 6271-08, as herein relevant, before amendment read:

> "(b) Notwithstanding the provisions of subsection (a) hereof, the office of county superintendent of education may be made appointive in any county in the manner herein provided. Upon the filing of a petition signed by not less than twenty per cent (20%) of the qualified electors of such county, it shall be the duty of the board of supervisors of such county, within sixty (60) days after the filing of such petition, to call a special election at which there shall be submitted to the qualified electors of such county the question of whether the office of county superintendent of education of said county shall continue to be elective or shall be filled by appointment by the county board of education of said county. The order calling such special election shall designate the date upon which same shall be held and a notice of such election, signed by the clerk of the board of supervisors, shall be published once a week for at

least three (3) consecutive weeks in at least one newspaper published in such county. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for such election and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper is published in such county then such notice shall be given by publication of same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one (21) days next preceding such election at three (3) public places in such county, one of which shall be at the door of the county courthouse in each judicial district. Said election shall be held, as far as is practicable, in the same manner as other elections are held in such county and all qualified electors of the county may vote therein. If a majority of such qualified electors who vote in such election shall vote in favor of the appointment of the county superintendent of education by the county board of education then, at the expiration of the term of the county superintendent of education then in office, the county superintendent of education of said county shall not be elected but shall thereafter be appointed by the county board of education for a term of not more than four (4) years; otherwise, said office shall remain elective. No special election shall be held in any county under the provisions of this subsection more often than once in every four (4) years, and no change from the

elective to the appointive method of the selection of the county superintendent of education shall become effective except at the expiration of the term of the county superintendent of education in office at the time such election is held.

"In any county of the first class lying wholly within a levee district and within which there is situated a city of more than forty thousand (40,000) population according to the last decennial federal census the county superintendent of education shall hereafter be appointed by the county board of education as above provided."

Following its amendment in 1966, Section 6271-08, as herein relevant, reads:

"(b) Notwithstanding the provisions of subsection (a) hereof, the office of county superintendent of education may be made appointive in any county in the manner herein provided. Upon the filing of a petition signed by not less than twenty per cent (20%) of the qualified electors of such county, it shall be the duty of the Board of supervisors of such county, within sixty (60) days after the filing of such petition to call a special election at which there shall be submitted to the qualified electors of such county the question of whether the office of county superintendent of education of said county shall continue to be elective of shall be filled by appointment by the county board of

education of said county. Provided, however, that where a Class Three county having an area in excess of eight hundred twenty-five (825) square miles has a county unit school system comprising less than an entire county, the petition shall only be signed by electors residing within the county unit school district and only electors of said district shall vote on the proposition of appointing the county superintendent of education. The order calling such special election shall designate the date upon which same shall be held and a notice of such election, signed by the clerk of the board of supervisors, shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in such county. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for such election and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper is published in such county then such notice shall be given by publication of same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one (21) days next preceding such election at three (3) public places in such county, one (1) of which shall be at the door of the county courthouse in each judicial district. Said election shall be held, as far as is practicable, in the same manner as other elections are held in such county and all qualified electors of the county may vote therein. If a majority of such qualified electors

who vote in such election shall vote in favor of the appointment of the county superintendent of education by the county board of education then, at the expiration of the term of the county superintendent of education then in office, the county superintendent of education of said county shall not be elected but shall thereafter be appointed by the county board of education for a term of not more than four (4) years; otherwise, said office shall remain elective. No special election shall be held in any county under the provisions of this subsection more often than once in every four (4) years, and no change from the elective to the appointive method of the selection of the county superintendent of education shall become effective except at the expiration of the term of the county superintendent of education in the office at the time such election is held.

"In any county of the first class lying wholly within a levee district and within which there is situated a city of more than forty thousand (40,000) population according to the last decennial Federal census the county superintendent of education shall hereafter be appointed by the county board of education as above provided.

"In any county of the second class wherein Interstate Highway 55 and State Highway 22 intersect and which is also traversed in whole or in part by U.S. Highways 49 and 51, and State

Highways 16, 17 and 43 and the Natchez Trace; in any Class Four county having a population in excess of twenty-five thousand (25,000) according to the 1960 Federal census, traversed by U.S. Interstate Highway 55 and wherein Mississippi Highways 12 and 17 intersect; in any county created after 1916 through which the Yazoo River flows; in any Class Four county having a land area of six hundred ninety-five (695) square miles, bordering on the State of Alabama, wherein the Treaty of Dancing Rabbit was signed and wherein U. S. Highway 45 and Mississippi Highway 14 intersect; in any county bordering on the Mississippi River wherein lies the campus of a landgrant institution or lands contiguous thereto owned by the institution; in any county lying within the Yazoo-Mississippi Delta Levee District, bordering upon the Mississippi River, and having a county seat with a population in excess of twenty-one thousand (21,000) according to the Federal census of 1960; in any county having a population of twenty-six thousand seven hundred fifty-nine (26,759) according to the 1960 Federal census, and wherein U.S. Highway 51 and U.S. Highway 84 and the Illinois Central Railroad and the Mississippi Central Railroad intersect; in any Class Three county wherein is partially located a national forest and wherein U.S. Highway 51 and Mississippi Highway 28 intersect, with a 1960 Federal census of twenty-seven thousand fifty-one (27,051) and a 1963 assessed valuation of $16,692,304.00; the county superintendent of

education hereafter shall be appointed by the county board of education.

"In any county bordering on the Gulf of Mexico or Mississippi Sound, having therein a test facility operated by the National Aeronautics and Space Administration, the county superintendent of education shall be appointed by the county board of education beginning January 1, 1972." (Emphasis added. Underlined portion is description fitting Claiborne County.)

9. The Voting Rights Act of 1965 (42 U.S.C. § 1973) is applicable to the State of Mississippi. That Act provides in Section 5 that whenever a State, or political subdivision thereof:

"shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964"

the State or subdivision cannot enforce such new qualification prerequisite, standard, practice or procedure unless and until it either:

(a) institutes an action in the United States District Court for the District of Columbia, and said court enters a declaratory judgment that such qualification, prerequisite, standard, practice, or provedure does not have the

purpose and will not have the effect of denying or abridging the right to vote on account of race or color; or

(b) submits such qualification, prerequisite, standard, practice, or procedure to the Attorney General of the United States and the Attorney General does not interpose an objection within 60 days after such submission.

10. The amendment to Section 6271-08 as described in paragraph eight (8) hereof is such a change in qualification, prerequisite, standard, practice, or procedure as is referred to in Section 5 of the Voting Rights Act of 1965.

11. Neither the State of Mississippi, nor any of its officials, nor Claiborne County, Mississippi, nor any of its officials has:

(a) instituted any action in the United States District Court for the District of Columbia for a declaratory judgment that Section 6271-08 of the Mississippi Code, as amended, does not have the effect of, denying or abridging the right to vote on account of race or color, nor

(b) submitted said amended section of the Code to the Attorney General of the United States for his approval.

Inasmuch as the enactment of the amendment to Section 6271-08 of the Mississippi Code by the State of Mississippi is in violation of the requirements of Section 5 of the Voting Rights Act of 1965, said enactment is void and of no legal force or effect. Plaintiffs have no adequate remedy at law and unless the relief requested herein is granted, plaintiffs will suffer irreparable harm in that their rights and the rights of the classes they represent to vote and run for public office will be denied and abridged in violation of Title 42 U.S.C. § 1973.

SECOND CLAIM FOR RELIEF

12. Plaintiffs reaver each and every averment contained in paragraphs 7 through 8 hereof.

13. The amendment to Section 6271-08 of the Mississippi Code, as described in paragraph 8 hereof has the purpose and effect of:

(a) denying or abridging, on account of race or color, the votes of the individual plaintiffs and the classes they represent;

(b) preventing the election of Negro candidates to the office of County Superintendent of Education by making said office appointive in those specially designated counties in Section 6271-08, such as Claiborne County, which have Negro voting majorities; and

(c) preventing potential Negro candidates to the

office of County Superintendent of Education from holding that office by election or appointment as white county boards of education, such as that in Claiborne County, elected at a time when Negroes were largely denied the right to vote on account of race or color, are not likely seriously to consider the appointment of qualified Negroes to the office of County Superintendent of education, thus denying or abridging, on account of race or color, the right of those persons to participate in Government as officeholders.

14. For the reasons stated in paragraph 13 above, Section 6271-08 of the Mississippi Code, as amended, violates the Fourteenth and Fifteenth Amendments to the Constitution of the United States and 42 U.S. C. §§ 1971 and 1973.

WHEREFORE, plaintiffs pray that:

1. Pursuant to the provisions of 28 U.S.C. § § 2281 and 2283 and 42 U.S.C. § 1973c, a district court of three judges be convened.

2. This Court declare that Section 6271-08 of the Mississippi Code, as amended, and also as applied in Claiborne County, is in violation of the Voting Rights Act of 1965 (Title 42 U.S.C. § 1973), the Fourteenth and Fifteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1971, and therefore void.

3. This Court issue preliminary and permanent

injunctions enjoining defendants, their agents, employees, successors and all persons in active concert and participation with them from enforcing, implementing or otherwise giving effect to Section 6271-08 of the Mississippi Code, as amended, in any way whatsoever.

4. This Court enjoin the appointment of the Superintendent of Education of Claiborne County unless and until appointment is authorized by the voters of the county pursuant to Section 6271-08 prior to its amendment as aforesaid, or until Section 5 of the Voting Rights Act of 1965 is complied with by defendants.

5. This Court order the defendants, their agents, employees, successors, and all persons in active concert and participation with them to hold elections for the Claiborne County Superintendent of Education on November 7, 1967.

6. This Court retain jurisdiction of this cause.

7. This Court grant plaintiffs such other and further relief as to the Court may seem just and proper, together with the costs and disbursements of this action.

Dated: Aug. 8, 1967.

Respectfully submitted,

S/ L. Lackey Rowe, Jr.
L. LACKEY ROWE, JR.
DENISON RAY
MARTHA M. WOOD
223 North Farish Street
Jackson, Mississippi 39201
Attorneys for Plaintiffs.

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

CHARLES E. BUNTON, ETC., ET AL
PLAINTIFFS

VS.

CIVIL ACTION
NO. 1204

JOE. T. PATTERSON, ETC., ET Al
DEFENDANTS

ANSWER OF DEFENDANTS

The Defendants Grover Goodwin, Dr. Frank Headley, Robert Templeton and Harold Barland, members of the Board of Education of Claiborne County, Mississippi, by their attorneys, filed herewith their answer to the above styled and numbered action:

1. Defendants deny that this Court has jurisdiction of their persons or the subject matter of this action.

2. Defendants are without information sufficient to form a belief as to the truth of the averments of Paragraph 3 of the Complaint and, thereby, deny the same.

3. Defendants deny that Plaintiffs have the capacity to bring this action on behalf of the class they seek to represent or that they can, and will, fairly and adequately protect the interest of such class, all as alleged in Paragraph 4 of the Complaint.

4. Defendants admit the allegations of Paragraph 5 of the Complaint.

Defendants admit that the defendants Goodwin, Headley, Templeton, and Barland are members of the Board of Education of Claiborne County, Mississippi, but deny that the defendant Smith is a member of said board. They admit that they have certain powers and duties under Section 6271-08 and Section 6252-01, et seq., of the Mississippi Code and submit that said sections speak for themselves.

Defendants admit that the defendants Cade and Allen are members of the County Election Commission of Claiborne County, but deny that the defendant Vaughn is a member of such commission. They admit that the County Election Commission of Claiborne County has general supervision of general elections in Claiborne County all as alleged in Paragraph 6(b) of the Complaint.

6. Defendants admit that each county in Mississippi, including Claiborne County, has a public school system governed in certain respects by the County Superintendent of Education. They are without information sufficient to form a belief as to the truth of the averments of the second and third sentences of Paragraph 7 of the Complaint.

7. Defendants admit the allegations of Paragraph 8 of the Complaint.

8. Defendants admit the allegations of Paragraph 9

of the Complaint.

9. Defendants deny the allegations of Paragraph 10 of the Complaint.

10. Defendants admit the allegations of Paragraphs 11(a) and (b) of the Complaint. All other allegations of Paragraph 11 are denied.

11. For their answer to Paragraph 12 of the Complaint, the Defendants re-aver each and every part of their answer to Paragraphs 7 through 8 of the Complaint.

12. Defendants deny the allegations of Paragraph 13 of the Complaint, including subparagraphs a, b, and c, thereof.

13. Defendants deny the allegations of Paragraph 14 of the Complaint.

Further answering the Complaint, Defendants deny that Plaintiffs are entitled to any relief in this action and allege that the same should be dismissed at the cost of plaintiffs.

J. T. DRAKE, JR. SPECIAL COUNSEL
POST OFFICE BOX 366
PORT GIBSON, MISSISSIPPI

JOE T. PATTERSON,
ATTORNEY GENERAL OF THE
STATE OF MISSISSIPPI

WELL S. WELLS,
ASSISTANT ATTORNEY

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing Answer of Defendants have been mailed via United States Mail, postage prepaid, to Honorable L. Lackey Rowe, Jr., 233 North Farish Street, Jackson, Mississippi, one of the attorneys of record for plaintiffs.

DONE, this the 7th day of September, 1967.

S/ Will S. Wells
WILL S. WELLS
ASSISTANT ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI

ATTORNEY FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

CHARLES E. BUNTON, ETC., ET AL
PLAINTIFFS

VS.

CIVIL ACTION
NO. 1204

JOE T. PATTERSON, ETC., ET AL
DEFENDANTS

ANSWER OF DEFENDANTS

The Defendants, John Cade and L. B. Allen, Jr., members of the County Election Commission of Claiborne County, Mississippi, by their attorneys, file herewith their answer to the Complaint in this action:

1. The Defendants deny that this Court has jurisdiction of their persons or the subject matter of this action.

2. For their answer to the Complaint in this action, the above named defendants adopt the answer in every respect of the Defendants Goodwin, Headley, Templeton and Barland to the Complaint filed herein against them, as their answer to said Complaint.

J. T. DRAKE, Jr., SPECIAL COUNSEL
POST OFFICE BOX 366
PORT GIBSON, MISSISSIPPI

JOE T. PATTERSON, ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI

WILL S. WELLS, ASSISTANT ATTORNEY
GENERAL OF THE STATE OF
MISSISSIPPI

Attorneys for Defendants

BY: S/ Will S. Wells
WILL S. WELLS, Of Counsel

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing Answer of Defendants have been mailed via United States Mail, postage prepaid, to Honorable L. Lackey Rowe, Jr., 233 North Farish Street, Jackson, Mississippi, one of the attorneys of record for plaintiffs.

DONE, this the 7th day of September, 1967.

S/ Will S. Wells
WILL S. WELLS
ASSISTANT ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI

ATTORNEY FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

VERNON TOM GRIFFIN, et al.
Plaintiffs,

vs.

JOE T. PATTERSON, et al.
Defendants.

CIVIL ACTION
No. 4148J

SETH BALLARD, et al.
Plaintiffs,

vs.

JOE T. PATTERSON, et al.,
Defendants.

CIVIL ACTION
No. 1200 W

J.C. FAIRLEY, et al.
Plaintiff,

vs.

JOE T. PATTERSON, et al.
Defendants.

CIVIL ACTION
No. 2205 H

LEVI MARSAW, III, et al.
Plaintiffs,

vs.

JOE T. PATTERSON, et al.
Defendants.

CIVIL ACTION
No. 1201 W

CHARLES E. BUNTON, et al.
Plaintiffs,

vs. CIVIL ACTION
No.1204 W

JOE T. PATTERSON, et al.
Defendants.

(Filed: Sept. 15, 1967)

MOTION FOR SUBSTITUTION OF PARTIES AND DROPPING AND ADDING PARTIES, FOR DISMISSAL OF CERTAIN CLAIMS FOR RELIEF, AND FOR DEFAULT JUDGMENT

Plaintiffs in each of the above styled actions, by their attorneys, respectfully move this Court:

1. In Civil Action No. 4148 J:

(a) To substitute Ed William Moses as a party defendant in lieu of defendant Mrs. Mabel D. Henrich, on the ground that Mrs. Mabel D. Henrich is no longer a Holmes County Election Commissioner and Ed William Moses has been appointed as Election Commissioner in her place.

(b) To dismiss plaintiffs' second for relief on the ground that this Court has no jurisdiction thereof and further on the ground that plaintiffs do not wish to pursue said claim for relief.

(c) For a default judgment against Joe T.

Patterson, Attorney General of the State of Mississippi, on the ground that he has neither appeared nor answered within the time set for doing so by Rule 12(a) of the Federal Rules of Civil Procedure.

2. In Civil Action No. 1200 W:

(a) To substitute Robert Lee Williams as a party defendant in lieu of defendant Iler K. Ellis, on the ground that Iler K. Ellis is no longer a member of the Jefferson County Board of Education and Robert Lee Williams has assumed his place.

(b) To dismiss plaintiffs' second claim for relief on the ground that this Court has no jurisdiction thereof and further on the ground that plaintiffs do not wish to pursue said claim for relief.

3. In Civil Action No. 2205 H:

(a) To substitute Mrs. Fred Blackwell as a party defendant in lieu of defendant Mrs. Mary E. Pon, on the ground that Mrs. Mary E. Pon is no longer a Forrest County Election Commissioner and Mrs. Fred Blackwell has assumed her place.

(b) To dismiss plaintiffs' second claim for relief on the ground that this Court has no jurisdiction thereof and further on the ground that plaintiffs do not wish to pursue said claim for relief.

4. In Civil Action No. 1201 W:

(a) To substitute Alma D. Maddox as a party defendant in lieu of defendant Paul Keller, on the ground that Paul Keller is deceased and his place as an Adams County Election Commissioner has been assumed by Alma D. Maddox.

(b) To drop the plaintiff Majorie Baroni and add in her place as a named plaintiff, Mami L. Mazique, on the ground that Majorie Baroni is a member of the Caucasian race and Mamie L. Mazique is a member of the Negro race and desires to join in this suit.

(c) To dismiss plaintiffs' second claim for relief on the ground that this Court has no jurisdiction thereof and further on the ground that plaintiffs do no wish to pursue said claim for relief.

5. In Civil Action No. 1204 W:

(a) To substitute Ethan Porter as a party defendant in lieu of defendant William Smith, on the ground that William Smith is no longer a member of the Board of Education of Claiborne County, and Ethan Porter has assumed his place.

(b) To substitute Orin R. Segrest, Jr. as a party defendant in lieu of defendant Robert Vaughn, on the ground that Robert Vaughn is no longer an Election Commissioner for Claiborne County and Orin R. Segrest, Jr., has assumed his place.

(c) To dismiss plaintiffs' second claim for relief on the ground that this Court has no jurisdiction thereof

pursue said claim for relief.

Dated: September 14, 1967

Respectfully submitted,

S/ L. Lackey Rowe, Jr.
L. LACKEY ROWE, JR.
DENISON RAY
MARTHA M. WOOD
233 North Farish Street
Jackson, Mississippi 39201

Attorneys for Plaintiffs.

To:

Joe T. Patterson, Esq.
Will S. Wells, Esq.
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New Capitol Building
Jackson, Mississippi

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P. O. Box 1288
Hattiesburg, Mississippi

J. T. Drake, Esq.
P. O. Box 366
Port Gibson, Mississippi

NOTICE OF MOTION

PLEASE TAKE NOTICE that the foregoing Motion for Substitution of Parties and Dropping and Adding Parties, for Dismissal of Certain Claims for Relief, and for Default Judgment is noticed for hearing on September 25, 1967, at 9:00 A.M., or as soon thereafter as counsel can be heard, before the Honorable Dan M. Russell, Jr., United States District Judge, in the United States Courthouse in Jackson, Mississippi.

Dated: September 14, 1967.

Respectfully submitted,

S/L. Lackey Rowe, Jr.
L. LACKEY ROWE, JR.
DENISON RAY
MARTHA M. WOOD
233 North Farish Street
Jackson, Mississippi 39201

Attorneys for Plaintiffs.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion for Substitution of Parties and Dropping and Adding Parties, for Dismissal of Certain Claims for Relief, and For Default Judgment and a copy of the foregoing Notice of Motion have been mailed this date, postage prepaid, to Joe T. Patterson, Esq., Will S. Wells, Esq., William A. Allain, Esq., Office of the Attorney General, New Capitol Building, Jackson Mississippi; Corban & Corban, Robert L. Corban, Esq., Fayette, Mississippi; B. C. Callon, Esq., P. O. Box 1315, Natchez, Mississippi; Calvin R. King, Esq., P. O. Drawer 392, Durant, Mississippi; R. A. Gray, Jr., Esq., Gray & Montague, 201-05 Carter Building, P. O. Box 1288, Hattiesburg, Mississippi and J. T. Drake, Esq., P. O. Box 366, Port Gibson, Mississippi.

Dated: September 14, 1967

S/L. Lackey Rowe, Jr.
L. LACKEY ROWE, JR.
DENISON RAY
MARTHA M. WOOD
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

VERNON TOM GRIFFIN, et al.
Plaintiffs,

vs.

JOE T. PATTERSON, et al.
Defendants.

CIVIL ACTION
No. 4148J

SETH BALLARD, et al.
Plaintiffs,

vs.

JOE T. PATTERSON, et al.,
Defendants.

CIVIL ACTION
No. 1200 W

J.C. FAIRLEY, et al.
Plaintiff,

vs.

JOE T. PATTERSON, et al.
Defendants.

CIVIL ACTION
No. 2205 H

LEVI MARSAW, III, et al.
Plaintiffs,

vs.

JOE T. PATTERSON, et al.
Defendants.

CIVIL ACTION
No. 1201 W

CHARLES E. BUNTON, et al.
Plaintiffs,

vs.. CIVIL ACTION
No.1204 W

JOE T. PATTERSON, et al.
Defendants.

(Filed Sept. 28, 1967)

ORDER

It appearing that the Order entered on September 25, 1967, in Civil Action Number 4148J, 1200W and 1204W should be clarified to make plain the intention of the Court,

IT IS ORDERED, that the same be and they are hereby amended to read as follows:

In Civil Action No. 4148J, Ed William Moses is, hereby, added as a party-defendant; The Complaint is dismissed as to the defendant Mrs. Mabel D. Henrich; Plaintiffs' second claim for relief is, hereby, dismissed without prejudice.

In Civil Action Number 1200W, Robert Lee Williams is, hereby, added as a party-defendant; The Complaint is dismissed as to Iler K. Ellis; Plaintiffs' second claim for relief is, hereby, dismissed without prejudice.

In Civil Action No. 1204W, Ethan Porter is, hereby, added as a party-defendant; The Complaint is dismissed as to the defendant, William Smith; Orin R. Segrest, Jr., is,

hereby, added as a party-defendant; The Complaint is dismissed as to the Defendant Robert Vaughn; Plaintiffs' second claim for relief is, hereby, dismissed without prejudice.

ORDERED, this the 28th day of September, 1967.

S/Harold Cox
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI WESTERN DIVISION

CHARLES E. BUNTON, ET AL
PLAINTIFFS

VS. CIVIL ACTION NO. 1204W

JOE T. PATTERSON, ET AL
DEFENDANTS

(Filed Oct. 8, 1967)

ORDER

This cause came on for hearing on the Complaint, the Answer and argument of counsel, it being stipulated in open court that this hearing would be considered as a final hearing on the merits, and all parties having announced that no factual issues are involved and no testimony or evidence was to be offered, the sole question for determination being whether or not Section 6271-08 of the Mississippi Code of 1942, as amended by the legislature at the regular session of 1966, comes within the purview of or is covered by Section 5 of the Voting Rights Act of 1965, being now Section 1973(c) of Title 42, U.S.C.

It is the opinion of the Court that said Section 6271-08 as amended by the legislature of Mississippi at its regular session of 1966 does not come within the purview of and is not covered by Title 42, Section 1973(c) U.S.C., and that plaintiffs are entitled to no relief in this action.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the injunction prayed for in this action be, and the same is, hereby, denied and the Complaint is dismissed at the cost of plaintiffs.

ORDERED AND ADJUDGED, this the 5th day of October, 1967.

S/ Harold Cox
UNITED STATES DISTRICT JUDGE
Acting For and on Behalf of The Court

A TRUE COPY, I HEREBY CERTIFY.
ROBERT C. THOMAS, CLERK
BY:
S/ Ruby L. Short
Deputy Clerk
Dated: 10/8/67

No. 1200-Civil Docket Entries

7-14-67 COMPLAINT, original and twelve copies filed.

8-23-67 , Answer of Defendants Sam Bullen, John Jewell Ball and Randolph Cupit, with certificateof service-filed.

9-15-67 Motion for Substitution of Parties and Dropping and adding parties, for dismissal of certain claims for relief, and for Default Judgment-filed.

9-28-67 Order amending order heretofore entered in this cause on September 25, 1967 adding Robert Lee Williams as a party-defendant to this cause, dismissing the complaint as to defendant Iler K. Ellis and dismissing without prejudice Plaintiffs' second claim for relief, filed and entered O B 1967 pages 211 and 212.

10-9-67 Order dismissing the complaint, denying injunction prayed for in said complaint, at the cost of plaintiffs, filed and entered OB 1967 page 226 and 227.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
VICKSBURG DIVISION

SETH BALLARD and CHARLES EVERS, on behalf of themselves and all other persons similarly situated,
Plaintiffs,

-vs- CIVIL ACTION NO. 1200

JOE T. PATTERSON, Attorney General of the State of Mississippi; ROBERT LEE WILLIAMS, I. D. STEWART, EMILE GUEDON, TRULY CUPIT and ANON KILLINGSWORTH, as Members of the Board of Education of Jefferson County; SAM BULLEN, JOHN JEWELL BALL and RANDOLPH CUPIT as County Election Commissioners for Jefferson County.
Defendants.

COMPLAINT

1. This action arises under the Voting Rights Act of 1965 (Title 42 U.S.C. § 1973), Fourteenth and Fifteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1971. It seeks a declaratory judgment that Section 6271-08 of the Mississippi Code, as amended, is violative of said Voting Rights Act, Fourteenth and Fifteenth Amendments and 42 U.S.C. § 1971, and preliminary and permanent injunctions against the application and enforcement of said Section 6271-08 by the Board of Education of Jefferson County, Mississippi, and against the appointment of the Superintendent of Education for Jefferson County by the Board of Education of Jefferson County pursuant to or in accordance with the provisions of Section 6271-08.

2. Jurisdiction is conferred on this Court by Title 28 U.S.C. § § 1343(3) and (4), 2201 and 2202, and by Title U.S.C.§ § 1971 (d) and 1973(j)(f). A district court of three judges is required to be convened by Title 28 U.S.C. Section 2281 and Title 43 U.S. C. Section 1973c.

3. Plaintiffs are all adult Negro citizens of Mississippi and of the United States, and are citizens, residents and qualified electors of Jefferson County, Mississippi.

4. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated as qualified electors of Jefferson County and as potential candidates for Superintendent of Education of Jefferson County, pursuant to Rule 23 of the Federal Rules of Civil Procedure. As to the classes: (1) they are so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the classes; (3) the claims of the plaintiffs are typical of the claims of the classes; (4) plaintiffs will fairly and adequately protect the interests of the classes; and (5) defendants have acted and will act on grounds generally applicable to the classes, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the classes as a whole.

5. Defendant Joe T. Patterson is Attorney General of the State of Mississippi.

6. (a) Defendants Ellis, Stewart, Guedon,Cupit and Killingsworth are members of the Jefferson County, and as such, have the power under the amended version of Section 6271-08 of the

Mississippi Code, to appoint the County Superintendent of Education for Jefferson County, which Superintendent would have the power and the duty to supervise the public schools to comply with the various laws relating thereto, pursuant to Sections 6252-01 *et seq.* of the Mississippi Code.

(b) Defendants Bullen, Ball and Cupit are the County Election Commissioners for Claiborne County and, as such, supervise and administer all general elections in Jefferson County pursuant to Sections 3204 *et seq.* of the Mississippi Code.

FIRST CLAIM FOR RELIEF

7. Each county in Mississippi, including Jefferson County, has a public school system governed in certain respects by the County Superintendent of Education. Prior to and on November 1, 1964, and up until the date referred to in paragraph 8 hereof, every county in Mississippi except one elected its Superintendent of Education unless it held a special election pursuant to statute to make such post appointive. (Mississippi Code 6271-08) Jefferson County has always elected its County Superintendent of Education.

8. Effective June 17, 1966, the Legislature of Mississippi with the approval of Governor Paul B. Johnson, amended the aforesaid Section 6271-08 to provide that in certain described counties, the Superintendent of Education must be appointed rather than elected.

Specifically, Section 6271-08, as herein relevant, before amendment read:

> "(b) Notwithstanding the provisions of subsection (a) hereof, the office of county superintendent of education may be made appointive in any county in the manner herein provided. Upon the filing of a petition signed by not less than twenty per cent (20%) of the qualified electors of such county, it shall be the duty of the board of supervisors of such county, within sixty (60) days after the filing of such petition, to call a special election at which there shall be submitted to the qualified electors of such county the question of whether the office of county superintendent of education of said county shall continue to be elective or shall be filled by appointment by the county board of education of said county. The order calling such special election shall designate the date upon which same shall be held and a notice of such election, signed by the clerk of the board of supervisors, shall be published once a week for at least three (3) consecutive weeks in at least one newspaper published in such county. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for such election and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper is published in such county then such notice shall be given by publication of same for the required time in some newspaper having a general circulation in such county and, in

addition, by posting a copy of such notice for at least twenty-one (21) days next preceding such election at three (3) public places in such county, one of which shall be at the door of the county courthouse in each judicial district. Said election shall be held, as far as is practicable, in the same manner as other elections are held in such county and all qualified electors of the county may vote therein. If a majority of such qualified electors who vote in such election shall vote in favor of the appointment of the county superintendent of education by the county board of education then, at the expiration of the term of the county superintendent of education then in office, the county superintendent of education of said county shall not be elected but shall thereafter be appointed by the county board of education for a term of not more than four (4) years; otherwise, said office shall remain elective. No special election shall be held in any county under the provisions of this subsection more often than once in every four (4) years, and no change from the elective to the appointive method of the selection of the county superintendent of education shall become effective except at the expiration of the term of the county superintendent of education in office at the time such election is held.

"In any county of the first class lying wholly within a levee district and within which there is situated a city of more than forty thousand (40,000) population according to the last

decennial federal census the county superintendent of education shall hereafter be appointed by the county board of education as above provided."

Following its amendment in 1966, Section 6271-08, as herein relevant, reads:

"(b) Notwithstanding the provisions of subsection (a) hereof, the office of county superintendent of education may be made appointive in any county in the manner herein provided. Upon the filing of a petition signed by not less than twenty per cent (20%) of the qualified electors of such county, it shall be the duty of the Board of supervisors of such county, within sixty (60) days after the filing of such petition to call a special election at which there shall be submitted to the qualified electors of such county the question of whether the office of county superintendent of education of said county shall continue to be elective of shall be filled by appointment by the county board of education of said county. Provided, however, that where a Class Three county having an area in excess of eight hundred twenty-five (825) square miles has a county unit school system comprising less than an entire county, the petition shall only be signed by electors residing within the county unit school district and only electors of said district shall vote on the proposition of appointing the county superintendent of education. The order calling such special election shall designate the date upon which same shall be held and a notice of

such election, signed by the clerk of the board of supervisors, shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in such county. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for such election and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper is published in such county then such notice shall be given by publication of same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one (21) days next preceding such election at three (3) public places in such county, one (1) of which shall be at the door of the county courthouse in each judicial district. Said election shall be held, as far as is practicable, in the same manner as other elections are held in such county and all qualified electors of the county may vote therein. If a majority of such qualified electors who vote in such election shall vote in favor of the appointment of the county superintendent of education by the county board of education then, at the expiration of the term of the county superintendent of education then in office, the county superintendent of education of said county shall not be elected but shall thereafter be appointed by the county board of education for a term of not more than four (4) years; otherwise, said office shall remain elective. No special election shall be held in any county under the

provisions of this subsection more often than once in every four (4) years, and no change from the elective to the appointive method of the selection of the county superintendent of education shall become effective except at the expiration of the term of the county superintendent of education in the office at the time such election is held.

"In any county of the first class lying wholly within a levee district and within which there is situated a city of more than forty thousand (40,000) population according to the last decennial Federal census the county superintendent of education shall hereafter be appointed by the county board of education as above provided.

"In any county of the second class wherein Interstate Highway 55 and State Highway 22 intersect and which is also traversed in whole or in part by U.S. Highways 49 and 51, and State Highways 16, 17 and 43 and the Natchez Trace; in any Class Four county having a population in excess of twenty-five thousand (25,000) according to the 1960 Federal census, traversed by U.S. Interstate Highway 55 and wherein Mississippi Highways 12 and 17 intersect; in any county created after 1916 through which the Yazoo River flows; in any Class Four county having a land area of six hundred ninety-five (695) square miles, bordering on the State of Alabama, wherein the Treaty of Dancing Rabbit was signed and wherein U. S. Highway 45 and Mississippi Highway 14

intersect; in any county bordering on the Mississippi River wherein lies the campus of a landgrant institution or lands contiguous thereto owned by the institution; in any county lying within the Yazoo-Mississippi Delta Levee District, bordering upon the Mississippi River, and having a county seat with a population in excess of twenty-one thousand (21,000) according to the Federal census of 1960; in any county having a population of twenty-six thousand seven hundred fifty-nine (26,759) according to the 1960 Federal census, and wherein U.S. Highway 51 and U.S. Highway 84 and the Illinois Central Railroad and the Mississippi Central Railroad intersect; in any Class Three county wherein is partially located a national forest and wherein U.S. Highway 51 and Mississippi Highway 28 intersect, with a 1960 Federal census of twenty-seven thousand fifty-one (27,051) and a 1963 assessed valuation of $16,692,304.00; the county superintendent of education hereafter shall be appointed by the county board of education.

"In any county bordering on the Gulf of Mexico or Mississippi Sound, having therein a test facility operated by the National Aeronautics and Space Administration, the county superintendent of education shall be appointed by the county board of education beginning January 1, 1972." (Emphasis added. Underlined portion is description fitting Jefferson County.)

9. The Voting Rights Act of 1965 (42 U.S.C. 1973) is applicable to the State of Mississippi. That Act provides in Section 5 that whenever a State, or political subdivision thereof:

> "shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964"

the State or subdivision cannot enforce such new qualification prerequisite, standard, practice or procedure unless and until it either:

> (a) institutes an action in the United States District Court for the District of Columbia, and said court enters a declaratory judgment that such qualification, prerequisite, standard, practice, or provedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color; or
>
> (b) submits such qualification, prerequisite, standard, practice, or procedure to the Attorney General of the United States and the Attorney General does not interpose an objection within 60 days after such submission.

10. The amendment to Section 6271-08 as described in paragraph eight (8) hereof is such a change in qualification, prerequisite, standard, practice, or procedure as is referred to in Section 5 of the Voting Rights Act of 1965.

11. Neither the State of Mississippi, nor any of its officials, nor Jefferson County, Mississippi, nor any of its officials has:

(a) instituted any action in the United States District Court for the District of Columbia for a declaratory judgment that Section 6271-08 of the Mississippi Code, as amended, does not have the effect of, denying or abridging the right to vote on account of race or color, nor

(b) submitted said amended section of the Code to the Attorney General of the United States for his approval.

Inasmuch as the enactment of the amendment to Section 6271-08 of the Mississippi Code by the State of Mississippi is in violation of the requirements of Section 5 of the Voting Rights Act of 1965, said enactment is void and of no legal force or effect. Plaintiffs have no adequate remedy at law and unless the relief requested herein is granted, plaintiffs will suffer irreparable harm in that their rights and the rights of the classes they represent to vote and run for public office will be denied and abridged in violation of Title 42 U.S.C. § 1973.

SECOND CLAIM FOR RELIEF

12. Plaintiffs reaver each and every averment contained in paragraphs 7 through 8 hereof.

13. The amendment to Section 6271-08 of the Mississippi Code, as described in paragraph 8 hereof has the purpose and effect of:

(a) denying or abridging, on account of race or color, the votes of the individual plaintiffs and the classes they represent;

(b) preventing the election of Negro candidates to the office of County Superintendent of Education by making said office appointive in those specially designated counties in Section 6271-08, such as Jefferson County, which have Negro voting majorities; and

(c) preventing potential Negro candidates to the office of County Superintendent of Education from holding that office by election or appointment as white county boards of education, such as that in Jefferson County, elected at a time when Negroes were largely denied the right to vote on account of race or color, are not likely seriously to consider the appointment of qualified Negroes to the office of County Superintendent of education, thus denying or abridging, on account of race or color, the right of those persons to participate in Government as officeholders.

14. For the reasons stated in paragraph 13 above, Section 6271-08 of the Mississippi Code, as amended, violates the Fourteenth and Fifteenth Amendments to the Constitution of the United States and 42 U.S. C. § § 1971 and 1973.

WHEREFORE, plaintiffs pray that:

1. Pursuant to the provisions of 28 U.S.C.

§§ 2281 and 2283 and 42 U.S.C. § 1973c, a district court of three judges be convened.

2. This Court declare that Section 6271-08 of the Mississippi Code, as amended, and also as applied in Jefferson County, is in violation of the Voting Rights Act of 1965 (Title 42 U.S.C. § 1973), the Fourteenth and Fifteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1971, and therefore void.

3. This Court issue preliminary and permanent injunctions enjoining defendants, their agents, employees, successors and all persons in active concert and participation with them from enforcing, implementing or otherwise giving effect to Section 6271-08 of the Mississippi Code, as amended, in any way whatsoever.

4. This Court enjoin the appointment of the Superintendent of Education of Jefferson County unless and until appointment is authorized by the voters of the county pursuant to Section 6271-08 prior to its amendment as aforesaid, or until Section 5 of the Voting Rights Act of 1965 is complied with by defendants.

5. This Court order the defendants, their agents, employees, successors, and all persons in active concert and participation with them to hold elections for the Jefferson County Superintendent of Education on November 7, 1967.

6. This Court retain jurisdiction of this

cause.

7. This Court grant plaintiffs such other and further relief as to the Court may seem just and proper, together with the costs and disbursements of this action.

Dated: July 12, 1967

Respectfully submitted,

S/ L. Lackey Rowe, Jr.
L. LACKEY ROWE, JR.
DENISON RAY
MARTHA M. WOOD
223 North Farish Street
Jackson, Mississippi 39201

Attorneys for Plaintiffs.

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
VICKSBURG DIVISION

SETH BALLARD, ET AL
PLAINTIFFS

V.

CIVIL ACTION
NO. 1200

JOE T. PATTERSON, ET AL
DEFENDANTS

ANSWER OF DEFENDANTS

The Defendants, Sam Bullen, John Jewell Ball, and Randolph Cupit, County Election Commissioners of Jefferson County, Mississippi, by their attorneys, file herewith their answer to the Complaint in this action:

1. Defendants deny that this Court has jurisdiction of their persons or the subject matter of this action.

2. For their answer to the Complaint in this action, the above named Defendants adopt the answer in every aspect of the Defendants Cupit, Killingsworth Stewart and Guedon to the Complaint filed herein against them.

JOE T. PATTERSON,
ATTORNEY GENERAL OF THE
STATE OF MISSISSIPPI

WILL S. WELLS, ASSISTANT
ATTORNEY GENERAL OF THE
STATE OF MISSISSIPPI

Attorneys For Defendants

BY:
WILL S. WELLS
Of Counsel

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing Answer of Defendants have been mailed via United States Mail, postage prepaid, to Honorable L. Lackey Rowe, Jr., 233 North Farish Street, Jackson, Mississippi, one of the attorneys of record for plaintiffs.

DONE, this the 22nd day of September, 1967.

S/ Will S. Wells
WILL S. WELLS
ASSISTANT ATTORNEY GENERAL OF
THE STATE OF MISSISSIPPI

ATTORNEY FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
VICKSBURG DIVISION

SETH BALLARD, ET AL
PLAINTIFFS

V. CIVIL ACTION
NO. 1200

JOE T. PATTERSON, ET AL
DEFENDANTS

ANSWER OF DEFENDANTS

The Defendants, Truly Cupit, Anon Killingsworth, Mrs. I. D. Stewart, Mrs. Emile Guedon, Members of the Board of Education of Jefferson County, Mississippi, by their attorneys, file herewith their answer to the Complaint in the above styled and numbered action.

1. Defendants deny that this Court has jurisdiction of their persons or the subject matter of this action.

2. Defendants are without information sufficient to form a belief as to the truth of the averments of Paragraph 3 of the Complaint and, thereby, deny the same.

3. Defendants deny that Plaintiffs have the capacity to bring this action on behalf of the class they seek to represent or that they can, and will, fairly and adequately protect the interest of such class, all as alleged in Paragraph 4 of the Complaint.

4. Defendants admit the allegations of Paragraph 5

of the Complaint.

5. Defendants admit that the Defendants, Stuart, Guedon, Cupit and Killingsworth are Members of the Board of Education of Jefferson County, Mississippi, but deny that the Defendant; Ellis, is a member of said board. They admit that they have certain power and duties under Sections 6271-08 and 6252-0, et seq., of the Mississippi Code and submit that said sections speak for themselves.

Defendants admit that the Defendants Bullen, Ball, and Cupit are Members of the County Election Commission of Jefferson County and, as such, have general supervision of general elections in Jefferson County, all as alleged in Paragraph 6(b) of the Complaint.

6. Defendants admit that each county in Mississippi, including Jefferson County, has a public school system governed in certain respects by the County Superintendent of Education. They are without information sufficient to form a belief as to the truth of the averments of the second and third sentences of Paragraph 7 of the Complaint.

7. Defendants admit the allegations of Paragraph 8 of the Complaint.

8. Defendants admit the allegations of Paragraph 9 of the Complaint.

9. Defendants deny the allegations of Paragraph 10 of the Complaint.

10. Defendants admit the allegations of Paragraphs 11(a) and (b) of the Complaint. All other allegations of Paragraph 11 are denied.

11. For their answer to Paragraph 12 of the Complaint, the Defendants re-aver each and every part of their answer to Paragraphs 7 through 8 of the Complaint.

12. Defendants deny the allegations of Paragraph 13 of the Complaint, including subparagraphs a, b, and c, thereof.

13. Defendants deny the allegations of Paragraph 14 of the Complaint.

Further answering the Complaint, Defendants deny that Plaintiffs are entitled to any relief in this action and allege that this action should be dismissed at the cost of Plaintiffs.

CORBAN AND CORBAN
ROBERT L. CORBAN
SPECIAL COUNSEL
FAYETTE, MISSISSIPPI

JOE T. PATTERSON,
ATTORNEY GENERAL OF
THE STATE OF MISSISSIPPI

WILL S. WELLS,
ASSISTANT ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI

Attorneys for Defendants
BY:
WILL S. WELLS
Of Counsel

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing Answer of Defendants have been mailed via United States Mail, postage prepaid, to Honorable L. Lackey Rowe, Jr., 233 North Farish Street, Jackson, Mississippi, one of the attorneys of record for plaintiffs.

DONE, this the 22nd day of September, 1967.

S/ Will S. Wells
WILL S. WELLS
ASSISTANT ATTORNEY GENERAL OF
THE STATE OF MISSISSIPPI

ATTORNEY FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

VERNON TOM GRIFFIN, et al.
Plaintiffs,

vs.

CIVIL ACTION
No. 4148J

JOE T. PATTERSON, et al.
Defendants.

SETH BALLARD, et al.
Plaintiffs,

vs.

CIVIL ACTION
No. 1200 W

JOE T. PATTERSON, et al.,
Defendants.

J.C. FAIRLEY, et al.
Plaintiff,

vs.

CIVIL ACTION
No. 2205 H

JOE T. PATTERSON, et al.
Defendants.

LEVI MARSAW, III, et al.
Plaintiffs,

vs.

CIVIL ACTION
No. 1201 W

JOE T. PATTERSON, et al.
Defendants.

CHARLES E. BUNTON, et al.
Plaintiffs,

vs.

CIVIL ACTION
No.1204 W

JOE T. PATTERSON, et al.
Defendants.

(Filed: Sept. 15, 1967)

MOTION FOR SUBSTITUTION OF PARTIES AND DROPPING AND ADDING PARTIES, FOR DISMISSAL OF CERTAIN CLAIMS FOR RELIEF, AND FOR DEFAULT JUDGMENT

Plaintiffs in each of the above styled actions, by their attorneys, respectfully move this Court:

1. In Civil Action No. 4148 J:

(a) To substitute Ed William Moses as a party defendant in lieu of defendant Mrs. Mabel D. Henrich, on the ground that Mrs. Mabel D. Henrich is no longer a Holmes County Election Commissioner and Ed William Moses has been appointed as Election Commissioner in her place.

(b) To dismiss plaintiffs' second for relief on the ground that this Court has no jurisdiction thereof and further on the ground that plaintiffs do not wish to pursue said claim for relief.

(c) For a default judgment against Joe T.

Patterson, Attorney General of the State of Mississippi, on the ground that he has neither appeared nor answered within the time set for doing so by Rule 12(a) of the Federal Rules of Civil Procedure.

2. In Civil Action No. 1200 W:

(a) To substitute Robert Lee Williams as a party defendant in lieu of defendant Iler K. Ellis, on the ground that Iler K. Ellis is no longer a member of the Jefferson County Board of Education and Robert Lee Williams has assumed his place.

(b) To dismiss plaintiffs' second claim for relief on the ground that this Court has no jurisdiction thereof and further on the ground that plaintiffs do not wish to pursue said claim for relief.

3. In Civil Action No. 2205 H:

(a) To substitute Mrs. Fred Blackwell as a party defendant in lieu of defendant Mrs. Mary E. Pon, on the ground that Mrs. Mary E. Pon is no longer a Forrest County Election Commissioner and Mrs. Fred Blackwell has assumed her place.

(b) To dismiss plaintiffs' second claim for relief on the ground that this Court has no jurisdiction thereof and further on the ground that plaintiffs do not wish to pursue said claim for relief.

4. In Civil Action No. 1201 W:

(a) To substitute Alma D. Maddox as a party defendant in lieu of defendant Paul Keller, on the ground that Paul Keller is deceased and his place as an Adams County Election Commissioner has been assumed by Alma D. Maddox.

(b) To drop the plaintiff Majorie Baroni and add in her place as a named plaintiff, Mami L. Mazique, on the ground that Majorie Baroni is a member of the Caucasian race and Mamie L. Mazique is a member of the Negro race and desires to join in this suit.

(c) To dismiss plaintiffs' second claim for relief on the ground that this Court has no jurisdiction thereof and further on the ground that plaintiffs do no wish to pursue said claim for relief.

5. In Civil Action No. 1204 W:

(a) To substitute Ethan Porter as a party defendant in lieu of defendant William Smith, on the ground that William Smith is no longer a member of the Board of Education of Claiborne County, and Ethan Porter has assumed his place.

(b) To substitute Orin R. Segrest, Jr. as a party defendant in lieu of defendant Robert Vaughn, on the ground that Robert Vaughn is no longer an Election Commissioner for Claiborne County and Orin R. Segrest, Jr., has assumed his place.

(c) To dismiss plaintiffs' second claim for relief on the ground that this Court has no jurisdiction thereof and further on the ground that plaintiffs do not wish to

and further on the ground that plaintiffs do not wish to pursue said claim for relief.

Dated: September 14, 1967

Respectfully submitted,

S/ L. Lackey Rowe, Jr.
L. LACKEY ROWE, JR.
DENISON RAY
MARTHA M. WOOD
233 North Farish Street
Jackson, Mississippi 39201

Attorneys for Plaintiffs.

To:

Joe T. Patterson, Esq.
Will S. Wells, Esq.
William A. Allain, Esq.
Office of the Attorney General
New Capitol Building
Jackson, Mississippi

Corban & Corban
Robert L. Corban, Esq.
Fayette, Mississippi

B. C. Callon, Esq.
P. O. Box 1315
Natchez, Mississippi

Calvin R. King, Esq.
P. O. Drawer 392
Durant, Mississippi

R. A. Gray, Jr., Esq.
Gray & Montague
201-05 Carter Building
P. O. Box 1288
Hattiesburg, Mississippi

J. T. Drake, Esq.
P. O. Box 366
Port Gibson, Mississippi

NOTICE OF MOTION

PLEASE TAKE NOTICE that the foregoing Motion for Substitution of Parties and Dropping and Adding Parties, for Dismissal of Certain Claims for Relief, and for Default Judgment is noticed for hearing on September 25, 1967, at 9:00 A.M., or as soon thereafter as counsel can be heard, before the Honorable Dan M. Russell, Jr., United States District Judge, in the United States Courthouse in Jackson, Mississippi.

Dated: September 14, 1967.

Respectfully submitted,

S/L. Lackey Rowe, Jr.
L. LACKEY ROWE, JR.
DENISON RAY
MARTHA M. WOOD
233 North Farish Street
Jackson, Mississippi 39201

Attorneys for Plaintiffs.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion for Substitution of Parties and Dropping and Adding Parties, for Dismissal of Certain Claims for Relief, and For Default Judgment and a copy of the foregoing Notice of Motion have been mailed this date, postage prepaid, to Joe T. Patterson, Esq., Will S. Wells, Esq., William A. Allain, Esq., Office of the Attorney General, New Capitol Building, Jackson Mississippi; Corban & Corban, Robert L. Corban, Esq., Fayette, Mississippi; B. C. Callon, Esq., P. O. Box 1315, Natchez, Mississippi; Calvin R. King, Esq., P. O. Drawer 392, Durant, Mississippi, R. A. Gray, Jr., Esq., Gray & Montague, 201-05 Carter Building, P. O. Box 1288, Hattiesburg, Mississippi and J. T. Drake, Esq., P. O. Box 366, Port Gibson, Mississippi.

Dated: September 14, 1967

S/L. Lackey Rowe, Jr.
L. LACKEY ROWE, JR.
DENISON RAY
MARTHA M. WOOD
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

VERNON TOM GRIFFIN, et al.
Plaintiffs,

vs.

CIVIL ACTION
No. 4148J

JOE T. PATTERSON, et al.
Defendants.

SETH BALLARD, et al.
Plaintiffs,

vs.

CIVIL ACTION
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JOE T. PATTERSON, et al.,
Defendants.

J.C. FAIRLEY, et al.
Plaintiff,

vs.

CIVIL ACTION
No. 2205 H

JOE T. PATTERSON, et al.
Defendants.

LEVI MARSAW, III, et al.
Plaintiffs,

vs.

CIVIL ACTION
No. 1201 W

JOE T. PATTERSON, et al.
Defendants.

CHARLES E. BUNTON, et al.
Plaintiffs,

vs.

CIVIL ACTION
No.1204 W

JOE T. PATTERSON, et al.
Defendants.

(Filed: Sept. 28, 1967)

ORDER

It appearing that the Order entered on September 25, 1967, in Civil Action Number 4148J, 1200W and 1204W should be clarified to make plain the intention of the Court,

IT IS ORDERED, that the same be and they are hereby amended to read as follows:

In Civil Action No. 4148J, Ed William Moses is, hereby, added as a party-defendant; The Complaint is dismissed as to the defendant Mrs. Mabel D. Henrich; Plaintiffs' second claim for relief is, hereby, dismissed without prejudice.,

In Civil Action Number 1200W, Robert Lee Williams is, hereby, added as a party-defendant; The Complaint is dismissed as to Iler K. Ellis; Plaintiffs' second claim for relief is, hereby, dismissed without prejudice.

In Civil Action No. 1204W, Ethan Porter is, hereby, added as a party-defendant; The Complaint is dismissed as to the defendant, William Smith; Orin R. Segrest, Jr., is,

hereby, added as a party-defendant; The Complaint is dismissed as to the Defendant Robert Vaughn; Plaintiffs' second claim for relief is, hereby, dismissed without prejudice.

ORDERED, this the 28th day of September, 1967.

S/Harold Cox
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

SETH BALLARD, ET AL
PLAINTIFFS

VS.

CIVIL ACTION
NO.1200 W

JOE T. PATTERSON, ET AL
DEFENDANTS

(Filed Oct. 8, 1967)

ORDER

This cause came on for hearing on the Complaint, the Answer and argument of counsel, it being stipulated in open court that this hearing would be considered as a final hearing on the merits, and all parties having announced that no factual issues are involved and no testimony or evidence was to be offered, the sole question for determination being whether or not Section 6271-08 of the Mississippi Code of 1942, as amended by the legislature at the regular session of 1966, comes within the purview of or is covered by Section 5 of the Voting Rights Act of 1965, being now Section 1973(c) of Title 42, U.S.C.

It is the opinion of the Court that said Section 6271-08 as amended by the legislature of Mississippi at its regular session of 1966 does not come within the purview of and is not covered by Title 42, Section 1973(c) U.S.C.,

and that plaintiffs are entitled to no relief in this action.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the injunction prayed for in this action be, and the same is, hereby, denied and the Complaint is dismissed at the cost of plaintiffs.

ORDERED AND ADJUDGED, this the 5th day of October, 1967.

S/ Harold Cox
UNITED STATES DISTRICT JUDGE
Acting For and on Behalf of The Court

A TRUE COPY, I HEREBY CERTIFY.
ROBERT C. THOMAS, CLERK
BY:
S/ Ruby L. Short
Deputy Clerk
Dated: 10/8/67

Civil Docket No. 4148

7-14-67 Complaint, original and nine copies, filed.

8-17-67 Answer of Defendants, Members of The Board of Education of Holmes County, filed. Copies of Answer mailed to Judges Cox, Coleman and Russell.

9-15-67 Plaintiff's motion for substitution of parties and dropping and adding parties, for dismissal of certain claims for relief, and for default judgment, with notice of motion for 9-25-67 at Jackson, Miss., and certificate of service, filed. Copies mailed to Judges Cox, Coleman and Russell. Copies mailed to Vicksburg and Hattiesburg for docketing and filing.

9-28-67 ORDER: it appearing that the Order entered on 9-25-67 and filed 9-26-67 should be clarified to make plain the intention of the Court, ordered that said order is amended to read as follows: In Civil Action No. 4148, Ed William Moses is, hereby added as a party defendant; The Complaint is dismissed as to the Defendant Mrs. Mabel D. Henrich; Plaintiffs' second claim for relief is, hereby dismissed without prejudice, filed and entered OB, 1967, Pages 906 & 907. (Copies mailed three judges and attorneys)

10-5-67 ORDER Opinion of the Court that plaintiffs are entitled to no relief and injunction prayed for denied and complaint is dismissed at the cost of the plaintiffs, filed and entered OB 1967 pages 947 and 948. Copies mailed three judges and attorneys.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

VERNON TOM GRIFFIN, ROBERT COOPER HOWARD, CORNELIUS BROOKS, LUCAS SIMS, ED McGRAW, JR., THOMAS G. JOHNSON, and JOHN LOVIE, on behalf of themselves and all other persons similarly situated,

Plaintiffs,

-vs-

CIVIL ACTION
NO. 4148

JOE T. PATTERSON, Attorney General of the State of Mississippi; W. B. KENNA, W. H. McKENZIE, JR., HOMER E. CHISHOLM, M. L. SMITH and JAMES BARRETT, as members of the Board of Education of Holmes County; MRS. HATTIE MAUDE FARMER, ED WILLIAM MOSES and MRS. JULIETTE GARLAND, as County Election Commissioners for Holmes County,

Defendants.

COMPLAINT

1. This action arises under the Voting Rights Act of 1965 (Title 42 U.S.C. Section 1973), Fourteenth and Fifteenth Amendments to the Constitution of the United States and 42 U.S.C. Section 1971. It seeks a declaratory judgment that Section 6271-08 of the Mississippi Code, as amended, is violative of said Voting Rights Act, Fourteenth and Fifteenth Amendments and 42 U.S.C. Section 1971, and preliminary and permanent injunctions against the application and enforcement of said Section 6271-08 by the Board of Education of Holmes County, Mississippi, and against the appointment of the Superintendent of Education for Holmes County by the Board of Education of Holmes County pursuant to or in accordance with the provisions of Section 6271-08.

2. Jurisdiction is conferred on this Court by Title 28 U.S.C. §§ 1343(3) and (4), 2201 and 2202, and by Title U.S.C. §§ 1971 (d) and 1973(j)(f). A district court of three judges is required to be convened by Title 28 U.S.C. Section 2281 and Title 43 U.S.C. Section 1973c.

3. Plaintiffs are all adult Negro citizens of Mississippi and of the United States, and are citizens, residents and qualified electors of Holmes County, Mississippi.

4. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated as qualified electors of Holmes County and as potential candidates for Superintendent of Education of Holmes County, pursuant to Rule 23 of the Federal Rules of Civil Procedure. As to the classes: (1) they are so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the classes; (3) the claims of the plaintiffs are typical of the claims of the classes; (4) plaintiffs will fairly and adequately protect the interests of the classes; and (5) defendants have acted and will act on grounds generally applicable to the classes, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the classes as a whole.

5. Defendant Joe T. Patterson is Attorney General of the State of Mississippi.

6. (a) Defendants Kenna, McKenzie, Chisholm, Smith and Barrett are members of the Board of Education of Holmes County, as such, have the power under the amended version of Section 6271-08 of the Mississippi Code, to appoint the

County Superintendent of Education for Holmes County, which Superintendent would have the power and the duty to supervise the public schools to comply with the various laws relating thereto, pursuant to Sections 6252-01 *et seq.* of the Mississippi Code.

(b) Defendants Farmer, Henrich and Garland are the County Election Commissioners for Holmes County and, as such, supervise and administer all general elections in Holmes County pursuant to Sections 3204 *et seq.* of the Mississippi Code.

FIRST CLAIM FOR RELIEF

7. Each county in Mississippi, including Holmes County, has a public school system governed in certain respects by the County Superintendent of Education. Prior to and on November 1, 1964, and up until the date referred to in paragraph 8 hereof, every county in Mississippi except one elected its Superintendent of Education unless it held a special election pursuant to statute to make such post appointive. (Mississippi Code Section 6171-08) Holmes County has always elected its County Superintendent of Education.

8. Effective June 17, 1966, the Legislature of Mississippi with the approval of Governor Paul B. Johnson, amended the aforesaid Section 6271-08 to provide that in certain described counties, the Superintendent of Education must be appointed rather than elected. Specifically, Section 6271-08, as herein relevant, before amendment read:

"(b) Notwithstanding the provisions of subsection (a) hereof, the office of county superintendent of education may be made appointive in any county in the manner herein provided. Upon the filing of a petition signed by not less than twenty per cent (20%) of the qualified electors of such county, it shall be the duty of the board of supervisors of such county, within sixty (60) days after the filing of such petition, to call a special election at which there shall be submitted to the qualified electors of such county the question of whether the office of county superintendent of education of said county shall continue to be elective or shall be filled by appointment by the county board of education of said county. The order calling such special election shall designate the date upon which same shall be held and a notice of such election, signed by the clerk of the board of supervisors, shall be published once a week for at least three (3) consecutive weeks in at least one newspaper published in such county. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for such election and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper is published in such county then such notice shall be given by publication of same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one (21) days next preceding such

election at three (3) public places in such county, one of which shall be at the door of the county courthouse in each judicial district. Said election shall be held, as far as is practicable, in the same manner as other elections are held in such county and all qualified electors of the county may vote therein. If a majority of such qualified electors who vote in such election shall vote in favor of the appointment of the county superintendent of education by the county board of education then, at the expiration of the term of the county superintendent of education then in office, the county superintendent of education of said county shall not be elected but shall thereafter be appointed by the county board of education for a term of not more than four (4) years; otherwise, said office shall remain elective. No special election shall be held in any county under the provisions of this subsection more often than once in every four (4) years, and no change from the elective to the appointive method of the selection of the county superintendent of education shall become effective except at the expiration of the term of the county superintendent of education in office at the time such election is held.

"In any county of the first class lying wholly within a levee district and within which there is situated a city of more than forty thousand (40,000) population according to the last decennial federal census the county superintendent of education shall hereafter be appointed by the county board of education as above provided."

Following its amendment in 1966, Section 6271-08, as herein relevant, reads:

> "(b) Notwithstanding the provisions of subsection (a) hereof, the office of county superintendent of education may be made appointive in any county in the manner herein provided. Upon the filing of a petition signed by not less than twenty per cent (20%) of the qualified electors of such county, it shall be the duty of the Board of supervisors of such county, within sixty (60) days after the filing of such petition to call a special election at which there shall be submitted to the qualified electors of such county the question of whether the office of county superintendent of education of said county shall continue to be elective of shall be filled by appointment by the county board of education of said county. Provided, however, that where a Class Three county having an area in excess of eight hundred twenty-five (825) square miles has a county unit school system comprising less than an entire county, the petition shall only be signed by electors residing within the county unit school district and only electors of said district shall vote on the proposition of appointing the county superintendent of education. The order calling such special election shall designate the date upon which same shall be held and a notice of such election, signed by the clerk of the board of supervisors, shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in such county. The first publication of such notice shall be made not less

than twenty-one (21) days prior to the date fixed for such election and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper is published in such county then such notice shall be given by publication of same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one (21) days next preceding such election at three (3) public places in such county, one (1) of which shall be at the door of the county courthouse in each judicial district. Said election shall be held, as far as is practicable, in the same manner as other elections are held in such county and all qualified electors of the county may vote therein. If a majority of such qualified electors who vote in such election shall vote in favor of the appointment of the county superintendent of education by the county board of education then, at the expiration of the term of the county superintendent of education then in office, the county superintendent of education of said county shall not be elected but shall thereafter be appointed by the county board of education for a term of not more than four (4) years; otherwise, said office shall remain elective. No special election shall be held in any county under the provisions of this subsection more often than once in every four (4) years, and no change from the elective to the appointive method of the selection of the county superintendent of education shall become effective except at the expiration of the

term of the county superintendent of education in the office at the time such election is held.

"In any county of the first class lying wholly within a levee district and within which there is situated a city of more than forty thousand (40,000) population according to the last decennial Federal census the county superintendent of education shall hereafter be appointed by the county board of education as above provided.

"In any county of the second class wherein Interstate Highway 55 and State Highway 22 intersect and which is also traversed in whole or in part by U.S. Highways 49 and 51, and State Highways 16, 17 and 43 and the Natchez Trace; in any Class Four county having a population in excess of twenty-five thousand (25,000) according to the 1960 Federal census, traversed by U.S. Interstate Highway 55 and wherein Mississippi Highways 12 and 17 intersect; in any county created after 1916 through which the Yazoo River flows; in any Class Four county having a land area of six hundred ninety-five (695) square miles, bordering on the State of Alabama, wherein the Treaty of Dancing Rabbit was signed and wherein U. S. Highway 45 and Mississippi Highway 14 intersect; in any county bordering on the Mississippi River wherein lies the campus of a landgrant institution or lands contiguous thereto owned by the institution; in any county lying

within the Yazoo-Mississippi Delta Levee District, bordering upon the Mississippi River, and having a county seat with a population in excess of twenty-one thousand (21,000) according to the Federal census of 1960; in any county having a population of twenty-six thousand seven hundred fifty-nine (26,759) according to the 1960 Federal census, and wherein U.S. Highway 51 and U.S. Highway 84 and the Illinois Central Railroad and the Mississippi Central Railroad intersect; in any Class Three county wherein is partially located a national forest and wherein U.S. Highway 51 and Mississippi Highway 28 intersect, with a 1960 Federal census of twenty-seven thousand fifty-one (27,051) and a 1963 assessed valuation of $16,692,304.00; the county superintendent of education hereafter shall be appointed by the county board of education.

"In any county bordering on the Gulf of Mexico or Mississippi Sound, having therein a test facility operated by the National Aeronautics and Space Administration, the county superintendent of education shall be appointed by the county board of education beginning January 1, 1972." (Emphasis added. Underlined portion is description fitting Jefferson County).

9. The Voting Rights Act of 1965 (42 U.S.C. 1973) is applicable to the State of Mississippi. That Act provides in Section 5 that whenever a State, or political subdivision thereof:

> "shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964"

the State or subdivision cannot enforce such new qualification prerequisite, standard, practice or procedure unless and until it either:

> (a) institutes an action in the United States District Court for the District of Columbia, and said court enters a declaratory judgment that such qualification, prerequisite, standard, practice, or provedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color; or
>
> (b) submits such qualification, prerequisite, standard, practice, or procedure to the Attorney General of the United States and the Attorney General does not interpose an objection within 60 days after such submission.

10. The amendment to Section 6271-08 as described in paragraph eight (8) hereof is such a change in qualification, prerequisite, standard, practice, or procedure as is referred to in Section 5 of the Voting Rights Act of 1965.

11. Neither the State of Mississippi, nor any of its officials, nor Holmes County, Mississippi, nor any of its officials has:

(a) instituted any action in the United States District Court for the District of Columbia for a declaratory judgment that Section 6271-08 of the Mississippi Code, as amended, does not have the effect of, denying or abridging the right to vote on account of race or color, nor

(b) submitted said amended section of the Code to the Attorney General of the United States for his approval.

Inasmuch as the enactment of the amendment to Section 6271-08 of the Mississippi Code by the State of Mississippi is in violation of the requirements of Section 5 of the Voting Rights Act of 1965, said enactment is void and of no legal force or effect. Plaintiffs have no adequate remedy at law and unless the relief requested herein is granted, plaintiffs will suffer irreparable harm in that their rights and the rights of the classes they represent to vote and run for public office will be denied and abridged in violation of Title 42 U.S.C. § 1973.

SECOND CLAIM FOR RELIEF

12. Plaintiffs reaver each and every averment contained in paragraphs 7 through 8 hereof.

13. The amendment to Section 6271-08 of the

Mississippi Code, as described in paragraph 8 hereof has the purpose and effect of:

(a) denying or abridging, on account of race or color, the votes of the individual plaintiffs and the classes they represent;

(b) preventing the election of Negro candidates to the office of County Superintendent of Education by making said office appointive in those specially designated counties in Section 6271-08, such as Holmes County, which have Negro voting majorities; and

(c) preventing potential Negro candidates to the office of County Superintendent of Education from holding that office by election or appointment as white county boards of education, such as that in Holmes County, elected at a time when Negroes were largely denied the right to vote on account of race or color, are not likely seriously to consider the appointment of qualified Negroes to the office of County Superintendent of education, thus denying or abridging, on account of race or color, the right of those persons to participate in Government as officeholders.

14. For the reasons stated in paragraph 13 above, Section 6271-08 of the Mississippi Code, as amended, violates the Fourteenth and Fifteenth Amendments to the Constitution of the United States and 42 U.S. C. §§1971 and 1973.

WHEREFORE, plaintiffs pray that:

1. Pursuant to the provisions of 28 U.S.C. § 2281 and 2283 and 42 U.S.C. § 1973c, a district court of three judges be convened.

2. This Court declare that Section 6271-08 of the Mississippi Code, as amended, and also as applied in Holmes County, is in violation of the Voting Rights Act of 1965 (Title 42 U.S.C. § 1973), the Fourteenth and Fifteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1971, and therefore void.

3. This Court issue preliminary and permanent injunctions enjoining defendants, their agents, employees, successors and all persons in active concert and participation with them from enforcing, implementing or otherwise giving effect to Section 6271-08 of the Mississippi Code, as amended, in any way whatsoever.

4. This Court enjoin the appointment of the Superintendent of Education of Holmes County unless and until appointment is authorized by the voters of the county pursuant to Section 6271-08 prior to its amendment as aforesaid, or until Section 5 of the Voting Rights Act of 1965 is complied with by defendants.

5. This Court order the defendants, their agents, employees, successors, and all persons in active concert and participation with them to hold elections for Holmes County Superintendent of Education on November 7, 1967.

6. This Court retain jurisdiction of this cause.

7. This Court grant plaintiffs such other and further relief as to the Court may seem just and proper, together with the costs and disbursements of this action.

Dated: July 12, 1967

Respectfully submitted,

S/ L. Lackey Rowe, Jr.
L. LACKEY ROWE, JR.
DENISON RAY
MARTHA M. WOOD
223 North Farish Street
Jackson, Mississippi 39201

Attorneys for Plaintiffs.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

VERNON TOM GRIFFIN, ROBERT COOPER HOWARD, CORNELIUS BROOKS, LUCAS SIMS, ED McGRAW, JR., of themselves and all other persons similarly situated,

Plaintiffs,

-vs-

CIVIL ACTION
NO. 4148

JOE T. PATTERSON, Attorney General of the State of Mississippi; W. B. KENNA, W. H. McKENZIE, JR., HOMER E. CHISHOLM, M. L. SMITH and JAMES BARRETT, as members of the Board of Education of Holmes County; MRS. HATTIE MAULE FARMER, MRS. MABEL D. HENRICH and MRS. JULIETTE GARLAND, as County Election Commissioners for Holmes County,

Defendants.

ANSWER OF DEFENDANTS, MEMBERS OF THE BOARD OF EDUCATION OF HOLMES COUNTY

The Defendants, W. B. Kenna, W. H. McKenzie, Jr., Homer E. Chisholm, M. L. Smith and James Barrett, members of the Board of Education of Holmes County, answering the Complaint, by their attorney, allege:

1. Defendants deny the allegations contained in paragraph one of the Complaint, except they admit that Plaintiffs are seeking the relief as stated in said paragraph.

2. Defendants admit the allegations of paragraph two of the Complaint.

3. Defendants allege that they have no knowledge or information sufficient to form a belief as to the truth of paragraph three of the Complaint.

4. Defendants deny the allegations contained in paragraph four of the Complaint.

5. Defendants admit the allegations of paragraph five of the Complaint.

6. Defendants admit the allegations of paragraph six (a) of the Complaint.

7. Defendants admit the allegations of paragraph seven of the Complaint.

8. Defendants admit the allegations of paragraph eight of the Complaint.

9. Defendants admit the allegations of paragraph nine of the Complaint, except Defendants deny that the Voting Rights Act of 1965 is applicable to the issues in this cause.

10. The Defendants deny the allegations of paragraph ten of the Complaint.

11. The Defendants deny the allegations of paragraph eleven of the Complaint, except they admit that they have not followed the procedures as set forth in subsections (a) and (b) paragraph eleven of the Complaint.

12. Defendants restate by reference their admissions and denials contained in paragraph seven through eight of the Complaint, and reavered in paragraph twelve of the Complaint.

13. The Defendants deny the allegations of paragraph thirteen of the Complaint.

14. The Defendants deny and refute the allegations of paragraph fourteen of the Complaint.

15. The Defendants deny that the Plaintiffs are entitled to any of the relief prayed for in the Complaint and specifically deny that Plaintiffs are entitled to any of the relief sought in paragraphs one, two, three, four, five, six or seven of the prayer to the Complaint

Dated: August 16, 1967

Respectfully submitted,

S/ Calvin R. King
Calvin R. King
P. O. Drawer 392
Durant, Mississippi,
Attorney for Defendants,
members of the Board of
Education of Holmes County.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

VERNON TOM GRIFFIN, et al.
Plaintiffs,

vs.

CIVIL ACTION
No. 4148J

JOE T. PATTERSON, et al.
Defendants.

SETH BALLARD, et al.
Plaintiffs,

vs.

CIVIL ACTION
No. 1200 W

JOE T. PATTERSON, et al.,
Defendants.

J.C. FAIRLEY, et al.
Plaintiff,

vs.

CIVIL ACTION
No. 2205 H

JOE T. PATTERSON, et al.
Defendants.

LEVI MARSAW, III, et al.
Plaintiffs,

vs.

CIVIL ACTION
No. 1201 W

JOE T. PATTERSON, et al.
Defendants.

CHARLES E. BUNTON, et al.
Plaintiffs,

vs.

CIVIL ACTION
No.1204 W

JOE T. PATTERSON, et al.
Defendants.

(Filed Sept., 15, 1967)

MOTION FOR SUBSTITUTION OF PARTIES AND DROPPING AND ADDING PARTIES, FOR DISMISSAL OF CERTAIN CLAIMS FOR RELIEF, AND FOR DEFAULT JUDGMENT

Plaintiffs in each of the above styled actions, by their attorneys, respectfully move this Court:

1. In Civil Action No. 4148 J:

(a) To substitute Ed William Moses as a party defendant in lieu of defendant Mrs. Mabel D. Henrich, on the ground that Mrs. Mabel D. Henrich is no longer a Holmes County Election Commissioner and Ed William Moses has been appointed as Election Commissioner in her place.

(b) To dismiss plaintiffs' second for relief on the ground that this Court has no jurisdiction thereof and further on the ground that plaintiffs do not wish to pursue said claim for relief.

(c) For a default judgment against Joe T.

Patterson, Attorney General of the State of Mississippi, on the ground that he has neither appeared nor answered within the time set for doing so by Rule 12(a) of the Federal Rules of Civil Procedure.

2. In Civil Action No. 1200 W:

(a) To substitute Robert Lee Williams as a party defendant in lieu of defendant Iler K. Ellis, on the ground that Iler K. Ellis is no longer a member of the Jefferson County Board of Education and Robert Lee Williams has assumed his place.

(b) To dismiss plaintiffs' second claim for relief on the ground that this Court has no jurisdiction thereof and further on the ground that plaintiffs do not wish to pursue said claim for relief.

3. In Civil Action No. 2205 H:

(a) To substitute Mrs. Fred Blackwell as a party defendant in lieu of defendant Mrs. Mary E. Pon, on the ground that Mrs. Mary E. Pon is no longer a Forrest County Election Commissioner and Mrs. Fred Blackwell has assumed her place.

(b) To dismiss plaintiffs' second claim for relief on the ground that this Court has no jurisdiction thereof and further on the ground that plaintiffs do not wish to pursue said claim for relief.

4. In Civil Action No. 1201 W:

(a) To substitute Alma D. Maddox as a party defendant in lieu of defendant Paul Keller, on the ground that Paul Keller is deceased and his place as an Adams County Election Commissioner has been assumed by Alma D. Maddox.

(b) To drop the plaintiff Majorie Baroni and add in her place as a named plaintiff, Mami L. Mazique, on the ground that Majorie Baroni is a member of the Caucasian race and Mamie L. Mazique is a member of the Negro race and desires to join in this suit.

(c) To dismiss plaintiffs' second claim for relief on the ground that this Court has no jurisdiction thereof and further on the ground that plaintiffs do no wish to pursue said claim for relief.

5. In Civil Action No. 1204 W:

(a) To substitute Ethan Porter as a party defendant in lieu of defendant William Smith, on the ground that William Smith is no longer a member of the Board of Education of Claiborne County, and Ethan Porter has assumed his place.

(b) To substitute Orin R. Segrest, Jr. as a party defendant in lieu of defendant Robert Vaughn, on the ground that Robert Vaughn is no longer an Election Commissioner for Claiborne County and Orin R. Segrest, Jr., has assumed his place.

(c) To dismiss plaintiffs' second claim for relief on the ground that this Court has no jurisdiction thereof

and further on the ground that plaintiffs do not wish to pursue said claim for relief.

Dated: September 14, 1967

Respectfully submitted,

S/ L. Lackey Rowe, Jr.
L. LACKEY ROWE, JR.
DENISON RAY
MARTHA M. WOOD
233 North Farish Street
Jackson, Mississippi 39201

Attorneys for Plaintiffs.

To:

Joe T. Patterson, Esq.
Will S. Wells, Esq.
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Office of the Attorney General
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Jackson, Mississippi

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Robert L. Corban, Esq.
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P. O. Drawer 392
Durant, Mississippi

R. A. Gray, Jr., Esq.
Gray & Montague
201-05 Carter Building
P. O. Box 1288
Hattiesburg, Mississippi

J. T. Drake, Esq.
P. O. Box 366
Port Gibson, Mississippi

NOTICE OF MOTION

PLEASE TAKE NOTICE that the foregoing Motion for Substitution of Parties and Dropping and Adding Parties, for Dismissal of Certain Claims for Relief, and for Default Judgment is noticed for hearing on September 25, 1967, at 9:00 A.M., or as soon thereafter as counsel can be heard, before the Honorable Dan M. Russell, Jr., United States District Judge, in the United States Courthouse in Jackson, Mississippi.

Dated: September 14, 1967.

Respectfully submitted,

S/L. Lackey Rowe, Jr.
L. LACKEY ROWE, JR.
DENISON RAY
MARTHA M. WOOD
233 North Farish Street
Jackson, Mississippi 39201

Attorneys for Plaintiffs.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion for Substitution of Parties and Dropping and Adding Parties, for Dismissal of Certain Claims for Relief, and For Default Judgment and a copy of the foregoing Notice of Motion have been mailed this date, postage prepaid, to Joe T. Patterson, Esq., Will S. Wells, Esq., William A. Allain, Esq., Office of the Attorney General, New Capitol Building, Jackson Mississippi; Corban & Corban, Robert L. Corban, Esq., Fayette, Mississippi; B. C. Callon, Esq., P. O. Box 1315, Natchez, Mississippi; Calvin R. King, Esq., P. O. Drawer 392, Durant, Mississippi; R. A. Gray, Jr., Esq., Gray & Montague, 201-05 Carter Building, P. O. Box 1288, Hattiesburg, Mississippi and J. T. Drake, Esq., P. O. Box 366, Port Gibson, Mississippi.

Dated: September 14, 1967

S/L. Lackey Rowe, Jr.
L. LACKEY ROWE, JR.
DENISON RAY
MARTHA M. WOOD
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

VERNON TOM GRIFFIN, et al.
Plaintiffs,

vs.

CIVIL ACTION
No. 4148J

JOE T. PATTERSON, et al.
Defendants.

SETH BALLARD, et al.
Plaintiffs,

vs.

CIVIL ACTION
No. 1200 W

JOE T. PATTERSON, et al.,
Defendants.

J.C. FAIRLEY, et al.
Plaintiff,

vs.

CIVIL ACTION
No. 2205 H

JOE T. PATTERSON, et al.
Defendants.

LEVI MARSAW, III, et al.
Plaintiffs,

vs.

CIVIL ACTION
No. 1201 W

JOE T. PATTERSON, et al.
Defendants.

CHARLES E. BUNTON, et al.
Plaintiffs,

vs.

CIVIL ACTION
No.1204 W

JOE T. PATTERSON, et al.
Defendants.

(Filed: Sept. 28, 1967)

ORDER

It appearing that the Order entered on September 25, 1967, in Civil Action Number 4148J, 1200W and 1204W should be clarified to make plain the intention of the Court,

IT IS ORDERED, that the same be and they are hereby amended to read as follows:

In Civil Action No. 4148J, Ed William Moses is, hereby, added as a party-defendant; The Complaint is dismissed as to the defendant Mrs. Mabel D. Henrich; Plaintiffs' second claim for relief is, hereby, dismissed without prejudice.

In Civil Action Number 1200W, Robert Lee Williams is, hereby, added as a party-defendant; The Complaint is dismissed as to Iler K. Ellis; Plaintiffs' second claim for relief is, hereby, dismissed without prejudice.

In Civil Action No. 1204W, Ethan Porter is, hereby, added as a party-defendant; The Complaint is dismissed as to the defendant, William Smith; Orin R. Segrest, Jr., is,

hereby, added as a party-defendant; The Complaint is dismissed as to the Defendant Robert Vaughn; Plaintiffs' second claim for relief is, hereby, dismissed without prejudice.

ORDERED, this the 28th day of September, 1967.

S/Harold Cox
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

VERNON TOM GRIFFIN, ET AL
PLAINTIFFS

VS.

CIVIL ACTION
NO. 4148J

JOE T. PATTERSON, ET AL
DEFENDANTS

(Filed Oct. 8, 1967)

ORDER

This cause came on for hearing on the Complaint, the Answer and argument of counsel, it being stipulated in open court that this hearing would be considered as a final hearing on the merits, and all parties having announced that no factual issues are involved and no testimony or evidence was to be offered, the sole question for determination being whether or not Section 6271-08 of the Mississippi Code of 1942, as amended by the legislature at the regular session of 1966, comes within the purview of or is covered by Section 5 of the Voting Rights Act of 1965, being now Section 1973(c) of Title 42, U.S.C.

It is the opinion of the Court that said Section 6271-08 as amended by the legislature of Mississippi at its regular session of 1966 does not come within the purview of and is not covered by Title 42, Section 1973(c) U.S.C., and that plaintiffs are entitled to no relief in this action.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the injunction prayed for in this action be, and the same is, hereby, denied and the Complaint is dismissed at the cost of plaintiffs.

ORDERED AND ADJUDGED, this the 5th day of October, 1967.

S/ Harold Cox
UNITED STATES DISTRICT JUDGE
Acting For and on Behalf of The Court

A TRUE COPY, I HEREBY CERTIFY.
ROBERT C. THOMAS, CLERK
BY:
S/ Ruby L. Short
Deputy Clerk
Dated: 10/8/67